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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-192785

DATE: OCT 11 1978

MATTER OF: Cartwright Van Lines, Inc.

DIGEST:

Claimant has sufficient defense to Government's prima facie case of liability for packed household goods where record contains evidence that articles were improperly packed by warehouseman, as agent for shipper, and evidence of reasonable care by carrier in form of good condition of external containers when delivered at destination.

Cartwright Van Lines, Inc. (Cartwright), by letter of July 18, 1978, protests the action taken by our Claims Division in disallowing its claim for \$58.50. This amount was deducted by the Government, as subrogee, from monies otherwise due Cartwright because of damage sustained to various articles in a shipment of household effects belonging to a member of the Air Force.

The household effects were packed by Federal Transfer and Storage (Federal), on November 29, 1972, and placed in its warehouse for non-temporary storage at Colorado Springs, Colorado. Cartwright picked up the shipment from Federal's warehouse on May 31, 1973, and transported it on Government bill of lading No. H-4658193 to the member's residence in Sacramento, California, where damage was discovered to 11 items. The items are identified to Federal's descriptive inventory. There has been settlement on five of the damaged items; these are the six items which were the subject of deduction and the carrier's claim:

<u>Item No.</u>	<u>Article</u>	<u>Nature of Damage</u>	<u>Amount Claimed</u>
44	flower pot holder	smashed	\$ 1.20
70	flower pots	broken	18.00
187	clock	face broken	18.00
		number missing	
199	chandelier	bent & broken	18.00
234	picture frame	glass broken	3.00
282	coffee pot	glass broken	1.50

Cartwright declines liability and asserts that the articles were improperly packed by Federal and that the containers arrived at destination in an undamaged condition. The carrier's claim was disallowed on the alternative grounds that it failed to present evidence that the damaged articles were improperly packed, and that even if they

were, Cartwright produced no evidence showing that "improper" packing was the sole cause of damage and that it was free from negligence.

The Claims Analysis Form, AF Form 2032, and the Government Inspection Report, DD Form 1841, indicate that the articles in items 44 and 70 were improperly packed. The Claims Analysis Form also shows that the cartons containing the articles in items 44 and 70 were intact, and that the cartons containing the articles in items 199 and 282 were not crushed.

To establish a prima facie case of carrier liability, a shipper must show that the goods were tendered to the carrier at origin in good order and condition, received from the carrier at destination in a damaged condition, and the amount of damages. The carrier, to relieve itself of liability, must show both that it was free from negligence and that the damage was due to one of the excepted causes. Missouri Pacific RR v. Elmore & Stahl, 377 U.S. 134 (1964).

Cartwright apparently concedes that there is a prima facie case of liability against it, thereby relieving the Government of the burden of showing that the articles discovered damaged at destination were in good condition at origin. Cf. Dischler v. Red Ball Motor Freight, Inc., 352 So.2d 764 (La. App. 1977), and Vaço Industries v. Navajo Freight Lines, Inc., 133 Cal. Rptr. 628 (Ct. App. 1976). The question here is whether Cartwright has perfected its defense.

Where a household goods carrier received packaged goods from the warehouse of another carrier, we held that a claimant who alleges improper packing is required to prove it and show that it was the sole cause of the damage. 57 Comp. Gen. 415, 419 (1978); see, also, 55 Comp. Gen. 611, 613 (1976).

The notations on the Claims Analysis Form and the Government Inspection Report are sufficient evidence that the articles damaged in the cartons identified as No. 44 and No. 70 were improperly packed. Further, as to those items, the additional notations that the cartons were intact when delivered at destination is sufficient evidence of the care with which the carrier handled these items. This showing constitutes a defense to the Government's prima facie case of carrier liability for items 44 and 70. There is nothing in the record, however, to support the carrier's bare assertions of the causes of the damage to items 187, 199, 234 and 282, except as to care exercised with respect to items 199 and 282; but as to these there is no evidence of improper packing.

We are instructing our Claims Division to revise the settlement and allow Cartwright \$19.20 of its claim for \$58.50, if otherwise correct.

R. F. KELLER

Deputy Comptroller General